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# *State sovereignty in the Polish doctrine of international law*

Suwerenność państwa w polskiej doktrynie prawa międzynarodowego

The concept of sovereignty emerged at the close of the Middle Ages to enter the canons of legal and political thought in the modern era. Although there had earlier been strong emancipation tendencies in national States[1], yet their full independence of the *dominium mundi* of the emperor and later the pope, and firm establishment as national States did not happen until the medieval *Christianitas* declined.

The view on Poland's independence was expressed in the doctrine as early as a hundred years before the publication of Bodin's *Six Books of the Commonwealth*, a work commonly regarded as crucial to the idea of sovereignty. This idea was advanced by Jan Ostroróg, who can be considered the forerunner of the Polish doctrine of independence. In his *Monumentum pro reipublicae ordinatione* (1477) Ostroróg rejected the concept of the legal and political unity of the world and argued for the independence of the superior authority in Poland. "The King of Poland asserts, he wrote, (which is true because he is subordinate to no

[1] This is widely discussed by J. Baszkiewicz: *Państwo suwerenne w feudalnej doktrynie politycznej do początków XIV wieku*, Warszawa 1964, *passim.*

one) that he recognizes no one superior to him save God" [„Poloniae rex asserit (quod et verum est, nemini enim subiacet) nullum superiorem se, praeter Deum, recognoscere"].[2]

Soon after the "golden age" of the Jagiellonian dynasty there was a decline in the doctrine of the law of nations in Poland., which lasted until the mid-eighteenth century. During that period, as S. Hubert contended, not a single work of at least an average value appeared in the realm of the law of nations.[3] This unfavourable condition changed while the splendour of the Commonwealth of Both Nations (i.e. Poland) was declining during the Enlightenment. No wonder that that period in Poland witnessed an unprecedented interest in *udzielność* [dominion] (as sovereignty was then called) since political and legal practice increasingly called into question the existence of sovereignty as applied to the Polish Commonwealth. The development of the law of nations in Poland of the Enlightenment period largely stemmed therefore from viewing the law of nations itself as a means of defence of the crumbling State.[4]

Sovereignty was analyzed in the context of the definition of the State and its fundamental rights. Three elements of the State were distinguished: population, territory and authority. State sovereignty was determined by the capacity of the authority to make law and maintain relations with other States. It may not have been too original an interpretation as compared with the achievements of world doctrine, nevertheless the works by such authors as Hieronim Stroynowski (*Nauka prawa przyrodzonego, politycznego, ekonomiki politycznej i prawa narodów* [The Science of natural, political law, political economics and the law of nations; 1785]) or Karol Wyrwicz (*O polityce* [On politics;1773]) demonstrated that also the Poles participated in it.[5]

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[2] *Starodawne prawa polskiego pomniki*, vol. V, part 1, (ed.) H. Dobrzyński, Kraków MDCCCLXXVIII, article I, p. 116. It should be reminded that in Polish historical sources there is a view about the full sovereignty of Poland as early as the 14th c. Or even earlier – in the 11th c. "Emperor Otton III's gestures to Boleslaus the Brave – G. Labuda wrote (*Zagadnienie suwerenności Polski wczesnofeudalnej w X–XII w.*, „Kwartalnik Historyczny" 1960, no. 4, p. 1049, 1052) – meant granting Boleslaus the title of a sovereign within the Empire". This proposition is not convincing because the existence of a sovereign within another (superior) sovereign is inconsistent with the nature of sovereignty.

[3] S. Hubert: *Poglądy na prawo narodów w Polsce czasów Oświecenia*, Wrocław 1960, p. 5. L. Ehrlich is more moderate in the evaluation of this period (*op. cit.*, p. 138) while asserting that neither of the main trends in the doctrine of the law of nations (positivism, naturalism) had no eminent representative in Poland at that time.

[4] The connection between the then political situation and the contents of the law of nations practice in Poland is indicated by S. Hubert, *op. cit.*, p. 69. See also M. Lachs: *Rzecz o nauce prawa międzynarodowego*, Wrocław–Warszawa–Kraków–Gdańsk–Łódź 1986, p. 78.

[5] A detailed presentation and analysis of views on sovereignty in the Enlightenment period has been given by: S. Hubert, *op. cit.*, p. 70–90; J. Kolasa: *Prawo narodów w szkołach polskich wieku Oświecenia*, Warszawa 1954, p. 119–130.

The nineteenth century was the period when the doctrine of the law of nations declined in Poland again although it was represented by the then well--known legal scholars: Franciszek Kasparek, Gustaw Roszkowski, and K. B. Szczaniecki. The loss of statehood produced without doubt an adverse climate for pursuing this science. As the last of the aforementioned authors explained, in a clearly too one-sided approach, "This doctrine kept reminding us of the violence done to Poland".[6]

The first twentieth-century decades are characterized by the dynamic development of the doctrine of the law of nations, increasingly referred to as international law. This was indicated inter alia by the appearance of several valuable textbooks. After the Second World War the pursuit of science was subjected to the confines of Marxist-Leninist ideology, which prevented full expansion of the potential residing in it. This certainly affected also the science of international law. The doctrine was especially vulnerable to ideological manipulation on account of the political context, the assessment of which agreed with the evaluation accepted by the Communist party and government circles. It is the issue of sovereignty that especially illustrates the process of instrumental treatment of science, which served to implement short-term political goals. Which is why very few remarks on sovereignty expressed in the first decade of People's Poland have retained a cognitive value.[7]

It is surprising that no monographic study has appeared in Poland, which would analyze sovereignty in the light of international law.[8] The Polish doctrine of international law is represented only by monographs on State sovereignty – except one book – authored by scholars whose activities took place mainly outside Poland: Wiktor Sukiennicki and Marek Stanisław Korowicz.[9] These are, we

[6] Quoted after M. Lachs, *op. cit.*, p. 103.

[7] The text on sovereignty of that period make a compelling impression that scholarly objectives in them were clearly subservient to ideology and politics. See: L. Gelberg: *Suwerenność a Karta Narodów Zjednoczonych*, "Państwo i Prawo" 1950, no. 3, p. 14–23; M. Lachs, J. Suchy, C. Berezowski, M. Muszkat: *Zagadnienie suwerenności w świetle Konstytucji Polskiej Rzeczypospolitej Ludowej*, [in:] *Zagadnienia prawne Konstytucji Polskiej Rzeczypospolitej Ludowej*, vol. I, Warszawa 1954, p. 115–158; S. Nahlik: *Plan Marshalla a suwerenność państw*, "Rocznik Prawa Międzynarodowego" 1949, p. 27–46.

[8] There are however books that analyze it from the historical, political-science and law theory point of view. See J. Baszkiewicz, *op. cit.*; A. Marszałek: *Suwerenność a integracja europejska w perspektywie historycznej. Spór o istotę suwerenności i integracji*, Łódź 2000; A. Pieniążek: *Suwerenność – problemy teorii i praktyki*, Warszawa 1979; I. Popiuk-Rysińska: *Suwerenność w rozwoju stosunków międzynarodowych*, Warszawa 1993.

[9] W. Sukiennicki: *La souveraineté des États en droit international moderne*, Paris 1927; M. S. Korowicz: *Modern Doctrines of the Sovereignty of States*, Leiden 1958; idem: *Organisations internationales et souveraineté des États membres*, Paris 1961; idem: *La souveraineté des États et l'avenir du droit international*, Paris 1945. The mentioned exception is the book by

should add, well-known and recognized studies in world literature. Nor have many papers or studies on State sovereignty appeared.[10] This arouses a sense of insufficiency if only for the fact that sovereignty is one of the chief concepts of international law and, as a matter of fact, it is impossible to explain this law and many of its institutions without presenting the nature and importance of sovereignty. A number of studies from different departments of international law do indeed relate to it but very often in a manner leading to an arbitrary and thereby instrumental interpretation of the concept of sovereignty.

A separate group is composed of recently more and more numerous studies devoted only to one aspect of the problem, that is the impact of European integration on the sovereignty of Member States.[11] The literature on State sover-

R. Kwiecień: *Suwerenność państwa. Rekonstrukcja i znaczenie idei w prawie międzynarodowym*, Kraków 2004.

[10] L. Antonowicz: *Pojęcie suwerenności w prawie międzynarodowym (szkic teoretyczny)*, [in:] *Problemy teorii i filozofii prawa*, Lublin 1985, p. 29–36; J. Kranz: *Kilka uwag o suwerenności państwa*, [in:] *Konstytucja dla rozszerzającej się Europy*, (ed.) E. Popławska, Warszawa 2000, p. 141–154; idem: *Państwo i jego suwerenność*, "Państwo i Prawo" 1996, no. 7, p. 3–24; idem: *Suwerenność państwa i prawo międzynarodowe*, [in:] *Spór o suwerenność*, (ed.) W. J. Wołpiuk, Warszawa 2001, p. 103–155; R. Kwiecień: *Interwencja zbrojna a naruszenie suwerenności państwa w prawie międzynarodowym*, „Sprawy Międzynarodowe" 2004, no. 1; W. Makowski: *Liga narodów a suwerenność państw*, „Gazeta Administracji i Policji Państwowej" 1925, no. 4 (part I, p. 77–79), no. 5 (part II, p. 101–102); K. Równy: *Refleksje nad zagadnieniem suwerenności państw*, [in:] *Suwerenność we współczesnym prawie międzynarodowym*, Warszawa 1991, p. 27–39; G. Rysiak: *Suwerenność*, [in:]: *Encyklopedia prawa międzynarodowego i stosunków międzynarodowych*, Warszawa 1976, p. 378–379; J. Tyranowski: *Ekonomiczne aspekty suwerenności i samostanowienia we współczesnym prawie międzynarodowym (zagadnienia podstawowe)*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1992, no. 1, p. 25–40; idem: *Suwerenna równość, samostanowienie i interwencja w prawie międzynarodowym*, [in:] *Pokój i sprawiedliwość przez prawo międzynarodowe. Zbiór studiów z okazji 60 rocznicy urodzin Profesora Janusza Gilasa*, (ed.) C. Mik, Toruń 1997, p. 399–410; idem: *Zasada suwerennej równości państw a inne podstawowe zasady prawa międzynarodowego*, [in:] *Suwerenność we współczesnym prawie międzynarodowym*, *op. cit.*, p. 18–28; A. Wasilkowski: *Suwerenność a współzależność*, [in:] *Suwerenność we współczesnym prawie międzynarodowym*, p. 8–17. It is worth noting that almost all the aforementioned texts come from the last decade.

[11] J. Barcz: *Suwerenność w procesach integracyjnych*, [in:] *Suwerenność i integracja europejska. Materiały pokonferencyjne*, (ed.) W. Czapliński, I. Lipowicz, T. Skoczny, M. Wyrzykowski, Warszawa 1999, p. 29–40; W. Czapliński: *Członkostwo w Unii Europejskiej a suwerenność państwowa – zarys problemu*, [in:] *Konstytucja dla rozszerzającej się Europy*, (ed.) E. Popławska, Warszawa 2000, p. 119–139. J. Kukułka: *Wymuszone samoograniczenie suwerenności Polski w Układzie Europejskim*, [in:] *Suwerenność i państwa narodowe w integrującej się Europie – przeżytek czy przyszłość*, (ed.) J. Fiszer, Cz. Mojsiewicz, Poznań–Warszawa 1995, p. 63–70; R. Kwiecień: *Sovereignty of the Eropean Union Member States: international legal aspects*, [in:] *The Emerging Constitutional Law of the European Union*, ed. A. Bodnar et al., Heidelberg 2003; J. Menkes: *Konstytucja, suwerenność, integracja – spóźniona (?) polemika*, [in:] *Konstytucja Rzeczypospolitej Polskiej z 1997 r. a członkostwo Polski w Unii Europejskiej*, (ed.) C. Mik, Toruń 1999, p. 89–111; A. Wasilkowski: *Uczestnictwo w strukturach europejskich*

eignty in international law is also enriched by textbooks of international law. Almost all of them make reference to sovereignty. Despite their textbook nature (as a rule laconic) these remarks often have a highly cognitive value.

The views on sovereignty, expressed in the Polish doctrine of international law can be grouped around the following problems:

- the definition of State sovereignty in international law,
- the relation of State sovereignty to the fundamental norms of international law,
- reasons for the limitation of State sovereignty,
- the influence of integration processes on State sovereignty.

In the Polish doctrine wide acceptance was given to the definition of sovereignty attributed to Ludwik Ehrlich[12], who understood by sovereignty the sum of "*samowładność*" [autocratic powers] (legal independence of external factors) and "*całowładność*" [total powers] (competence to regulate domestic relations).[13] In the Polish doctrine it is regarded as a classic interpretation of State sovereignty. Literature often gives prominence to the negative aspect of sovereignty, i.e. it is defined as the independence of the State of other subjects, which feature constitutes the foundation of the State's capacity to perform legal acts in international relations.[14] Finally, there are definitions of sovereignty that present it as a *sui generis* "driving force" enabling the State to form its international status. In this interpretation sovereignty is defined as "necessary competence to

*a suwerenność państwowa*, „Państwo i Prawo" 1996, no. 4–5, p. 15–23; A. Wentkowska: *Wpływ zasad wspólnotowego porządku prawnego na suwerenność państwa polskiego*, [in:] *Konstytucja Rzeczypospolitej Polskiej z 1997 r. a członkostwo Polski w Unii Europejskiej…*, p. 113–133; K. Wójtowicz: *Suwerenność w procesie integracji europejskiej*, [in:] *Spór o suwerenność…*, p. 156–176.

[12] L. Ehrlich: *Prawo narodów*, Lwów 1927, p. 107 and successive editions of the textbook. It is necessary to add that although this term is associated with L. Ehrlich, the first to use it in Polish literature was probably – W. Makowski, *op. cit.*, p. 78.

[13] This is directly accepted by: J. Gilas: *Prawo międzynarodowe*, Toruń 1995, p. 119; S. E. Nahlik: *Wstęp do nauki prawa międzynarodowego*, Warszawa 1967, p. 13–14; G. Rysiak, *op. cit.*, p. 378; A. Klafkowski: *Prawo międzynarodowe publiczne*, 5th ed., Warszawa 1979, p. 140. In a similar way, although without direct reference to Ehrlich, sovereignty is defined by L. Gelberg: *Zarys prawa międzynarodowego*, 3rd ed., Warszawa 1979, p. 102. See also W. Góralczyk: *Prawo międzynarodowe publiczne w zarysie*, 8th ed., Warszawa 2001, p. 124.

[14] See L. Antonowicz, *Pojęcie suwerenności…*, p. 32; idem: *Podręcznik prawa międzynarodowego*, 6th ed., Warszawa 2001, p. 15, 40; C. Berezowski: *Prawo międzynarodowe publiczne*, part I, Warszawa 1966, p. 90; W. Czapliński, A. Wyrozumska: *Prawo międzynarodowe publiczne. Zagadnienia systemowe*, Warszawa 1999, p. 114; M. S. Korowicz: *Modern Doctrines…*, *op. cit.*, p. 37; J. Makowski: *Podręcznik prawa międzynarodowego*, Warszawa 1948, p. 66–68; W. Sukiennicki, p. 24–25; A. Wasilkowski: *Suwerenność a współzależność*, *op. cit.*, p. 9; *Zarys prawa międzynarodowego publicznego*, (ed.) M. Muszkat, vol. I, Warszawa 1955, p. 158.

appear in international relations"[15], "legal possibility to independently exercise all rights and contract obligations"[16], or as "full capacity to fulfil functions of State independently of other subjects".[17] These definitions of sovereignty do not exclude but rather complement one another. The interpretation of sovereignty as a full and unlimited capacity to fulfil functions of State does certainly claim to be regarded as the most general and thereby exhaustive definition. The claim is entirely justified. The real significance of the definition of sovereignty, however, comes to light only after its relation to the fundamental norms of international law has been confronted with and explained, which will be discussed below. In the meantime, two things should be emphasized in connection with the definitions of sovereignty given above. First, the Polish doctrine unanimously accepts that sovereignty is the main defining characteristic of the State.[18] Second, the doctrine generally rejects the absolutization of sovereignty, i.e. identifying it with freedom of actions in international and domestic relations because this undermines the binding force of international law.[19] We can also observe the practice of distancing oneself from attempts to define sovereignty through the substance of competencies vested in the State.[20] This is connected with the question of the so-called reserved sphere composed of matters "essentially within the domestic jurisdiction of any state", as stipulated in Article 2 para 7, the Charter of the United Nations. The scope of the reserved sphere is different with individual States because it is determined by the current state of international obligations arising from general and particular international law. It is therefore rightly

[15] R. Bierzanek, J. Symonides: *Prawo międzynarodowe publiczne*, Warszawa 2001, p. 125. However, the quintessence of argument is puzzling here: "the question whether the State is sovereign or not relates to sphere of facts rather than law".

[16] J. Tyranowski: *Suwerenna równość, samostanowienie i interwencja…*, p. 405.

[17] J. Kranz: *Państwo i jego suwerenność…*, p. 4; idem: *Suwerenność państwa i prawo międzynarodowe*, *op. cit.*, p. 104; R Kwiecień: *Suwerenność państwa…*, *passim*; Cf. also C. Mik: *Europejskie prawo wspólnotowe. Zagadnienia teorii i praktyki*, vol. I, Warszawa 2000, p. 270–271, who defines sovereignty as meta-competence – the original capacity of the State to make final decisions.

[18] This is justified most fully by L. Antonowicz: *Pojęcie państwa w prawie międzynarodowym*, Warszawa 1974. One could note that views going further were presented, that is those identifying possession of sovereignty with being the subject of rights in international law. Those were expressed by L. Ehrlich, *op. cit.*, p. 107; L. Gelberg: *Zarys…*, p. 101 (for Gelberg an exception were international governmental organizations whose status as carriers of rights developed 'under the pressure of events"); A. Klafkowski, *op. cit.*, p. 133, 134, 140 (for Klafkowski an exception was international legal status of carrier of rights of the Holy See). Currently, the view seeing sovereignty as a criterion of carrier of rights in international law has been abandoned.

[19] As early as 1919–1939 this was exhaustively justified by W. Sukiennicki, *op. cit.*, p. 87–101.

[20] J. Kranz (*Suwerenność…*, p. 112, 117, 139) clearly calls such attempts as irrelevant. W. Czapliński, A. Wyrozumska (*op. cit.*, p. 114) assert that it is difficult to establish what minimum of competence determines the existence of State sovereignty. Cf. also R Kwiecień: *Suwerenność państwa…*, p. 91–108.

indicated in literature that the existence of the reserved sphere is determined by international law, which defines the scope of the former every time.[21] Consequently, it is difficult to accept the proposition that there are legal grounds for usurpation by the States to unilaterally qualify given matters as being within their domestic jurisdiction.[22] The problem seems in due measure unambiguous in relation to particular international law, within which it is comparatively easy to establish the existence of the State's assent to changing the status of given matters from domestic ones into internationalized matters. It is however more difficult to establish this in relation to general non-conventional international law. Disputes over the character of specific norms as norms *iuris cogentis* illustrate the doubtful nature of the issue. What is indisputable is that matters regulated by international law preclude the State's omnipotence in relation to them. This point of view leads to the question whether in the domain of international law it is not more accurate to speak of the sovereignty of this law instead of State sovereignty? It entails another question: if we acknowledge that States create norms of international law in the course of mutual contacts, is it not so that a mechanism has arisen over which its makers have lost control? These questions have not been directly dealt with in the Polish doctrine.[23] They were discussed, however, as if from the other side, within the problem of the importance of sovereignty for international law. This significance is viewed in a uniform way for it is generally accepted that the existence of sovereign States is a necessary condition for the existence of international law, which continues to be, in its greater part, "inter-State" law. Which is why, without the subjects that, owing to sovereignty, are the main makers and addressees of its norms, international law loses its *raison d'être*.[24]

Is State sovereignty therefore subject to special protection in international law? Is sovereignty a legal norm at all, the infringement of which produces legal consequences? As regards the first question the answer is in the affirmative, although one might add in passing that sovereignty is sometimes mythologized

[21] See W. Sukiennicki, *op. cit.*, p. 324–334; J. Kranz: *Suwerenność…*, p. 123–124; R Kwiecień: *Suwerenność państwa…*, p. 108–116.

[22] This thesis was advanced by J. Makowski: *Wewnętrzna kompetencja państwa*, "Zeszyty Naukowe Szkoły Głównej Służby Zagranicznej" 1956, no. 2, p. 3–19, especially p. 10, 18. Makowski maintained that contrary to the resolution of the Institute of International Law of 1932 stipulating inter alia that no State can resolve unilaterally whether in a specific case the subject matter of litigation belongs to the exclusive jurisdiction of a State or not, that every State can by virtue of its sovereignty determine what its domestic matter is.

[23] An exception is the cited monograph by W. Sukiennicki, the leading idea of which is the thesis about the precedence of the international legal order over the States and their domestic law.

[24] See for example L. Antonowicz: *Podręcznik…*, p. 13–15; L. Gelberg: *Zarys…*, p. 103; M. S. Korowicz: *Modern Doctrines…*, p. 40; J. Makowski: *Podręcznik…*, p. 69; S. E. Nahlik: *Wstęp…*, p. 15; J. Tyranowski: *Zasada…*, p. 19.

here by separating the protection of it from the protection of the State's legal existence. The second question is often answered also in the affirmative, what's more, one often speaks of "the principle of sovereignty", which is intended to emphasize the fundamental character of the norm of State sovereignty. There is a view in literature, however, which challenges the normative character of State sovereignty and recognizes it only as an international law concept.[25] Sovereignty here is treated as a regulatory idea of its kind, which, without being a legal norm itself, makes possible the existence of legal norms binding upon States. This understanding of the role of sovereignty does not appear groundless, especially as one observes that in its origin the idea of sovereignty was merely an ascertainment of the fact of the independence of State authority, while the rise of international law in the full sense of the word coincided in time with the emergence of this idea. In the course of the development of international practice sovereignty was given additional substance that frequently distorted its original meaning.

This does not denote that sovereignty does not have any direct normative meaning. It acquires this through its connection with the principle of equal sovereignty of States. It is common in the doctrine to associate sovereignty with the principle of equal sovereignty and, not entirely justified, to identify them. The principle of equal sovereignty stipulates that all States are equal in respect of their sovereignty. Therefore, there is no smaller or greater, or better or worse sovereignty in international law. Sovereignty is indivisible and expresses the legal independence of States of one another and their full capacity to act within their jurisdiction as well as in international relations.

Let us return to the issue of protection of sovereignty. It is largely explained by the relation of sovereignty to the fundamental principles of international law: the observance of international obligations, protection of human rights, self-determination of peoples, the duty to refrain from (or prohibition of) the threat or use of force against another State.

The doctrine agrees about the issue of the relation of sovereignty to the principle of observance of law: there is no contradiction between State sovereignty and subordination to international law.[26] Owing to this, one can view the principle of observance of international law as a "meta-principle" through whose perspective it is necessary to consider the relation of sovereignty to other principles of international law.

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[25] This thesis is advanced especially by J. Kranz: *Państwo…*, p. 4; idem: *Suwerenność…*, p. 105; J. Tyranowski: *Suwerenna równość…*, p. 400 and R. Kwiecień: *Suwerenność państwa…*, p. 95.

[26] See for example L. Antonowicz: *Podręcznik…*, p. 40; J. Kranz: *Suwerenność…*, p. 138; J. Makowski: *Podręcznik…*, p. 69; W. Sukiennicki, *op. cit.*, p. 87–101.

The prohibition of the use of armed force serves to protect the legal existence of the State and thereby its sovereignty. There are several exceptions to this rule. Two of them raise no doubts: self-defence (individual and collective) and an armed intervention undertaken under a decision of the UN Security Council acting pursuant to Chapter VII of the United Nations Charter. The use of armed force, however, is questionable within the framework of the so-called "humanitarian intervention", "invited intervention" or " pro-democracy intervention".

Humanitarian interventions are justified by the need to compel a State that commonly violates human rights to desist from doing so. Thus within the framework of humanitarian intervention, the problem arises at the same time of the relation of sovereignty to the principle of human rights protection. It amounts to the question whether the State, invoking its sovereignty, can with impunity commit acts towards the population under its jurisdiction that are absolutely prohibited by international law and whether, despite this fact, it can have claims to protection of sovereignty in the event of preventive measures taken by third States. Polish literature on the subject contains the unequivocal view about the need for reaction to such situations on the part of the international community. A humanitarian intervention is thereby recognized as a legal, "specifically qualified kind of prevention" without prejudice to the sovereignty of the State affected by the use of force within this framework.[27]

The evaluation of admissibility of invited intervention, whose purpose is to assist a recognized government to stay in power, and of pro-democracy intervention serving to implement the right of a people to self-determination, is conducted in the context of conflict between the principles of equal sovereignty and self-determination of peoples. Literature indicates that the former should take precedence. Consequently, invited intervention is treated as lawful whereas pro-democracy intervention as unlawful precisely on account of the infringement of the principle of equal sovereignty.[28]

Infringement and restriction are forms of the limitation of the sovereignty of States. The justification is that the criterion for distinguishing between them lies in the observance or non-observance of the will of the State.[29] This occurs where actions contravene international law. Restriction of sovereignty is therefore a consequence of legal actions of the interested State. A distinction is also made between the restriction of sovereignty and the restriction of exercise thereof. The former lies in the partial deprivation of the State's possibility to appear in inter-

[27] So writes J. Kranz: *Suwerenność…*, p. 128–131, 138–139.

[28] So writes J. Tyranowski: *Ekonomiczne…*, p. 29; idem: *Suwerenna…*, p. 408.

[29] L. Antonowicz: *Podręcznik…*, p. 41; idem: *Pojęcie suwerenności…*, p. 33. Otherwise J. Kranz (*Suwerenność…*, p. 140), who believes that "infringement of sovereignty should be defined through the infringement of international law norms that protect it rather than through violation of the alleged principle of legal sovereignty".

national relations, while the latter is the effect of international obligations that do not, however, deprive the State of the capacity to appear in international relations as a subject enjoying full rights.[30]

When accepting the view of the restriction of sovereignty by way of contracting international obligations one should at the same time accept the thesis about the gradation of sovereignty. Yet this leads to the conclusion which is hardly compatible with the principle of equal sovereignty, i.e. that States are not equal with respect to their sovereignty but each one has it to a different degree. The thesis about the restriction of sovereignty through contracting international obligations is, one might believe, the result of interpreting sovereignty in terms of the State's exclusive jurisdiction: the broader this jurisdiction, the less restricted the sovereignty of the State. However, this leads to the conclusion that can hardly be accepted: the fewer international obligations the greater sovereignty. In the Polish doctrine the opposite view is strongly represented, which asserts that sovereignty is indivisible and cannot be gradated. Consequently, from the standpoint of international law one cannot speak of limited sovereignty for sovereignty either is or is not.[31] No wonder that in the debate on the possible effect of the European Union membership on Poland's sovereignty there is a dominant view that negates the restriction of sovereignty in the light of international law.[32] Within this framework it is argued that as a result of the European Union membership its institutions are mandated, under the international agreement, to exercise some powers of the State authority, and consequently only restriction of the exercise of sovereignty occurs.[33] It is also asserted that the legal decision concerning the European Union membership not only constitutes the expression of State sovereignty *par excellence*, but also permits one to interpret the concept of sovereignty in qualitatively new terms.[34] The position of the Polish doctrine of international law is therefore diametrically opposed to social reservations or even phobias. It follows that either sovereignty has two different

[30] L. Ehrlich: *Prawo…*, wyd. III, p. 105–107; S. E. Nahlik: *Wstęp…*, p. 14; G. Rysiak, *op. cit.*, p. 379; A. Wasilkowski: *Uczestnictwo…*, p. 20–21.

[31] W. Czapliński, A. Wyrozumska, *op. cit.*, p. 115; J. Kranz: *Państwo…*, p. 23; idem: *Suwerenność…*, p. 135; J. Tyranowski: *Suwerenna…*, p. 400.

[32] The opposite view is found in the doctrine very rarely. The restriction of sovereignty as a result of EU membership is indicated by: L. Antonowicz: *Podręcznik…*, p. 41 (The author speaks here, strictly speaking, about self-limitation, concluding therefrom that State sovereignty is not an absolute value protected by international law); J. Kukułka, *op. cit.*, p. 65–66.

[33] So writes J. Tyranowski: *Prawo europejskie instytucjonalne*, Poznań 1998, p. 135–137; A. Wasilkowski: *Uczestnictwo…*, p. 20–21; K. Wójtowicz, *op. cit.*, p. 160, 167. The joint exercise of sovereignty is spoken of by C. Mik, *op. cit.*, p. 270–271. Similarly, A. Wentkowska, *op. cit.*, p. 127–129. Cf also R. Kwiecień: *Sovereignty…*, *passim.*

[34] See J. Barcz: *Suwerenność…*, p. 34, 36; idem: *Integracja europejska – suwerenność – tożsamość*, "Przegląd Zachodni" 2001, no. 3, p. 11; W. Czapliński, *op. cit.*, p. 138–139. See also J. Menkes, *op. cit.*, p. 107–108.

referents here and this is where incompatibility of the two standpoints comes from, or there is one referent, but at least one interpretation of it is wrong.

Sovereignty is a crucial problem in international law. A particular mode of perceiving it stems directly from the understanding of the whole nature of international law. The accepted conception of sovereignty in turn impinges on the interpretation of particular institutions of this law. For the doctrine this is certainly hardly a revealing opinion. State sovereignty has always been present in it both in the views of apologists and those negating it. In the Polish doctrine the former are in the overwhelming majority. What is more, it would be difficult to name any representative who would, as for example Scelle or Kelsen did, consistently challenge the significance of State sovereignty for international law. Primarily its positivist character should account for this position of Polish doctrine. For it is characteristic of the doctrine seeing the only source of international law in the will of the State to perceive State sovereignty as the main foundation of this law. It should be added, however, that the contemporary Polish doctrine is "soft" positivism. In the context of the issue of State sovereignty it emphasizes its (sovereignty's) significance but does not absolutize it. And it does not do so because it accepts the development in international law of institutions that rival sovereignty. At the same time it remains positivist because it explains the existence of these institutions by the consensual will of States. While observing new phenomena in the practice of international relations, one can see numerous indications that the mutual relations between State sovereignty and other institutions of international law will not remain static. Nor is it likely that this reason for the theoretical attraction of the problem of sovereignty will disappear in the nearest future. Because as long as the States remain the main actors in international relations, discussion will go on about that which their nature is perceived in: sovereignty. And in this context there still remains the topical question accompanying the idea of sovereignty almost from the moment of its emergence: do new forms of competition and cooperation between States lead to the relativization of sovereignty or perhaps it is only the perspective of viewing it that changes.

STRESZCZENIE

Artykuł analizuje rozumienie suwerenności państwa w polskiej nauce prawa międzynarodowego w kontekście następujących problemów: 1) definicji suwerenności państwa; 2) stosunku suwerenności do norm podstawowych prawa międzynarodowego; 3) ograniczeń suwerenności państwa; 4) wpływu procesów integracyjnych na suwerenność państwa.

W nauce polskiej powszechny jest pogląd uznający suwerenność za konstytutywną cechę państwa. Ten wynikający z pozytywizmu prawniczego punkt widzenia wpływa na rozumienie roli suwerenności w prawie międzynarodowym. W nauce polskiej w szcze-

gólności ciągle podkreślane jest zasadnicze znaczenie suwerenności państwa dla systemu prawa międzynarodowego. Z drugiej jednak strony zauważalne jest odchodzenie od powszechnej niegdyś definicji suwerenności jako sumy wyłącznych kompetencji państwa na rzecz pojmowania jej jako pełnej zdolności do wykonywania funkcji państwowych. Dlatego też rzadko w polskiej nauce prawa międzynarodowego występuje pogląd o ograniczeniu suwerenności państwa na skutek członkostwa w Unii Europejskiej.